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SOUTHERN DISTRICT OF CALIFORNIA

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1 BRIGGS LAW CORPORATION [FILE: 1190.03]
2 Cory J. Briggs (State Bar no. 176284)
3 Mekaela M. Gladden (State Bar no. 253673)
4 99 East "C" Street, Suite 111
5 Upland, CA 91786
6 Telephone: 909-949-7115
7 Facsimile: 909-949-7121

8 Attorneys for Plaintiffs La Cuna de Aztlan Sacred Sites
9 Protection Circle Advisory Committee, Californians for
10 Renewable Energy, Alfredo Acosta Figueroa, Phillip Smith,
11 Patricia Figueroa, Ronald Van Fleet, and Catherine Ohrin-Greipp

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 '10 CV 2664 WQH

WVG

15 LA CUNA DE AZTLAN SACRED SITES
16 PROTECTION CIRCLE ADVISORY
17 COMMITTEE; CALIFORNIANS FOR
18 RENEWABLE ENERGY; ALFREDO
19 ACOSTA FIGUEROA; PHILLIP SMITH;
20 PATRICIA FIGUEROA; RONALD VAN
21 FLEET; and CATHERINE OHRIN-GREIPP,

22 Plaintiffs,

23 vs.

24 UNITED STATES DEPARTMENT OF THE
25 INTERIOR; KEN SALAZAR, in the official
26 capacity of Secretary of the United States
27 Department of the Interior; UNITED STATES
28 BUREAU OF LAND MANAGEMENT;
ROBERT ABBEY, in the official capacity of
Director of the United States Bureau of Land
Management; TERI RAML, in the official
capacity of District Manager of the California
Desert District of the United States Bureau of
Land Management; MARGARET GOODRO, in
the official capacity of Field Manager of the El
Centro Field Office of the United States Bureau
of Land Management; JOHN KALISH, in the
official capacity of Field Manager of the Palm
Spring South Coast Field Office of the United
States Bureau of Land Management; RUSTY
LEE, in the official capacity of Field Manager
of the Needles Field Office of the United States
Bureau of Land Management; and ROXIE
TOST, in the official capacity of Field
Manager of the Barstow Field Office of the
United States Bureau of Land Management,

Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND MANDAMUS
RELIEF UNDER THE
ADMINISTRATIVE PROCEDURES
ACT, THE NATIONAL HISTORIC
PRESERVATION ACT, THE
NATIONAL ENVIRONMENTAL
POLICY ACT, THE FEDERAL LAND
POLICY AND MANAGEMENT ACT,
AND THE NATIVE AMERICAN
GRAVES PROTECTION AND
REPATRIATION ACT

1 Plaintiffs LA CUNA DE AZTLAN SACRED SITES PROTECTION CIRCLE
2 ADVISORY COMMITTEE, CALIFORNIANS FOR RENEWABLE ENERGY, ALFREDO
3 ACOSTA FIGUEROA, PHILLIP SMITH, PATRICIA FIGUEROA, RONALD VAN FLEET,
4 and CATHERINE OHRIN-GREIPP allege as follows:

5 **Parties**

6 1. Plaintiff La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee
7 ("LA CUNA") is a non-profit, 501(c)(3) organization and a party to that certain *Amendment No.*
8 *1 to Memorandum of Understanding Between United States Department of the Interior Bureau*
9 *of Land Management and the Southern Low Desert Resource Conservation and Development*
10 *Council*. LA CUNA is comprised of 15 indigenous and culturally aware individuals who are
11 dedicated to physically protecting the Blythe Giant Intaglios, other geoglyphs, and several
12 hundred sacred sites that are located along the Colorado River from Needles, California, to
13 Yuma, Arizona. (A true and correct copy of *Amendment No. 1* is attached to this pleading as
14 Exhibit "A.")

15 2. Plaintiff Californians for Renewable Energy is a non-profit organization formed
16 to promote public education concerning the responsible development of renewable energy and
17 in the preservation of and respect for Native American culture.

18 3. Plaintiffs Alfredo Acosta Figueroa, Phillip Smith, Patricia Figueroa, Ronald Van
19 Fleet, and Catherine Ohrin-Greipp are individuals who reside in the areas affecting by the
20 actions challenged in this lawsuit and have an interest in the responsible development of
21 renewable energy and in the preservation of and respect for Native American culture.

22 4. The United States Department of the Interior and the United States Bureau of
23 Land Management are agencies or instrumentalities of the United States.

24 5. The following Defendants are being sued in their official capacities: Ken Salazar,
25 in the official capacity of Secretary of the United States Department of the Interior; Robert
26 Abbey, in the official capacity of Director of the United States Bureau of Land Management;
27 Teri Raml, in the official capacity of District Manager of the California Desert District of the
28 United States Bureau of Land Management; Margaret Goodro, in the official capacity of Field

1 Manager of the El Centro Field Office of the United States Bureau of Land Management; John
 2 Kalish, in the official capacity of Field Manager of the Palm Spring South Coast Field Office
 3 of the United States Bureau of Land Management; Rusty Lee, in the official capacity of Field
 4 Manager of the Needles Field Office of the United States Bureau of Land Management; and
 5 Roxie Trost, in the official capacity of Field Manager of the Barstow Field Office of the United
 6 States Bureau of Land Management.

7 **Background Information**

8 6. Generally speaking, this lawsuit challenges Defendants' actions in connection
 9 with six solar-electricity generation projects taking place on federal (public) land: namely,
 10 *Ivanpah Solar Electric Generating System Project and Associated Amendment to the California*
 11 *Desert Conservation Area Plan* ("Ivanpah Project"), approximately 3,472 acres in size; *Genesis*
 12 *Solar Energy Project and Amendment to the California Desert Conservation Area Plan*
 13 ("Genesis Project"), approximately 1,950 acres in size; *Imperial Valley Solar Project and*
 14 *Amendment to the California Desert Conservation Area Land Use Management Plan* ("Imperial
 15 Project"), approximately 6,360 acres in size; *Chevron Energy Solutions Lucerne Valley Solar*
 16 *Project and Amendment to the California Desert Conservation Area Plan* ("Chevron Project"),
 17 approximately 422 acres in size; *Calico Solar Project and Amendment to the California Desert*
 18 *Conservation Area Land Use Management Plan* ("Calico Project"), approximately 4,613 acres
 19 in size; and *Blythe Solar Power Project and Amendment to the California Desert Conservation*
 20 *Area Plan* ("Blythe Project"), approximately 7,025 acres in size. The records of decision
 21 adopted by and the approvals given by Defendants for each of the challenged projects
 22 (collectively, "Projects") are as follows:

23 A. For the Ivanpah Project, Defendants have (among other things) approved
 24 an amendment to the California Desert Conservation Area Plan ("CDCA Plan") to include the
 25 Ivanpah Project as an approved power generation location under the Energy Production and
 26 Utility Corridors Element of the CDCA Plan; and granted four right-of-way authorizations.¹

28 ¹ The right-of-way authorizations are for the Construction Logistics site (CACA-49502) to Solar Partners I, II, and VIII, LLC; for the Ivanpah 1 site (CACA-49504) to Solar Partners II, LLC; for Ivanpah 2 site (CACA-48668) to Solar Partners I, LLC; and for Ivanpah 3 site (CACA-49503) to Solar

1 B. For the Genesis Project, Defendants have (among other things) approved
2 an amendment to the CDCA Plan to include the Genesis Project as an approved power
3 generation location under the Energy Production and Utility Corridors Element of the CDCA
4 Plan; and granted a right-of-way authorization.

5 C. For the Imperial Project, Defendants have (among other things) approved
6 an amendment to the CDCA Plan to include the Imperial Project as an approved power
7 generation location under the Energy Production and Utility Corridors Element of the CDCA
8 Plan; and granted a right-of-way authorization.

9 D. For the Chevron Project, Defendants have (among other things) approved
10 an amendment to the CDCA Plan to include the Chevron Project as an approved power
11 generation location under the Energy Production and Utility Corridors Element of the CDCA
12 Plan; and granted a right-of-way authorization.

13 E. For the Calico Project, Defendants have (among other things) approved an
14 amendment to the CDCA Plan to include the Calico Project as an approved power generation
15 location under the Energy Production and Utility Corridors Element of the CDCA Plan; and
16 granted a right-of-way authorization.

17 F. For the Blythe Project, Defendants have (among other things) approved an
18 amendment to the CDCA Plan to include the Blythe Project as an approved power generation
19 location under the Energy Production and Utility Corridors Element of the CDCA Plan; and
20 granted a right-of-way authorization.

21 7. Plaintiffs challenge the Projects on a variety of grounds. By way of example and
22 not limitation:

23 A. For each of the Projects, Defendants failed to properly engage in the
24 consultations required for the Project under the National Historic Preservation Act ("NHPA"),
25 16 U.S.C. § 470 *et seq.*

26 B. For each of the Projects, Defendants failed to conduct an adequate analysis
27 of the cumulative impacts, failed to prepare a programmatic environmental impact statement,
28

Partners VIII, LLC,

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF ETC.

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1 failed to adequately identify and evaluate the significance of the affected cultural environment,
 2 and failed to conduct an adequate analysis of alternatives to the Projects under the National
 3 Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*

4 C. For the Projects collectively, Defendants failed to prepare a programmatic
 5 environmental impact statement for the broad major federal action contemplated by the Projects,
 6 in violation of NEPA. In a presentation delivered at Defendants' National Land Use Planning
 7 Conference in 2009, Defendants announced publicly that they were in the process of preparing
 8 a programmatic statement covering the Projects (and other solar-electricity generation projects).
 9 It turns out, however, that Defendants failed to complete the programmatic statement before
 10 approving the Projects. (A true and correct copy of the presentation is attached to this pleading
 11 as Exhibit "B.")

12 D. For each of the Projects, Defendants violated the Federal Land Policy and
 13 Management Act of 1976 ("FLPMA"), 43 U.S.C. § 1701 *et seq.*, by authorizing solar-electricity
 14 generation activities on lands designated in the CDCA Plan as Class L (Limited Use) lands even
 15 though such activities are permitted under the CDCA Plan only on Class M (Moderate Use) or
 16 Class I (Intensive Use) lands, and by allowing the permanent impairment of the lands affected
 17 by the Projects and allow unnecessary or undue degradation on these lands.

18 E. Defendants' approval of the Projects will result in the intentional
 19 excavation, disposal, or other removal of Native American cultural items (including human
 20 remains) known to be or strongly suspected of being on the Projects' sites, in violation of the
 21 Native American Graves Protection and Repatriation Act ("NAGPRA"), 25 U.S.C. § 3001 *et*
 22 *seq.*

23 **Jurisdiction, Venue, and Exhaustion of Remedies**

24 8. This Court has jurisdiction over this proceeding pursuant to Sections 1331 and
 25 1361 of Title 28 of the U.S. Code because this pleading alleges violations of federal law and
 26 seeks to compel Defendants to perform duties owed to Plaintiff, its members, and other
 27 members of the public. The Court also has jurisdiction over this proceeding pursuant to Section
 28 551 *et seq.* of Title 5 of the U.S. Code, commonly known as the Administrative Procedure Act

1 (“APA”), because the pleading seeks judicial review of actions taken by one or more agencies
2 or officers of the United States.

3 9. Venue is proper in this Court under Section 1391(e) of Title 28 of the U.S. Code,
4 because (i) Defendants are either officers, employees, or agencies of the United States and/or
5 (ii) both a substantial part of the events or omissions giving rise to this proceeding were
6 committed in this judicial district and a substantial part of the property at issue in this
7 proceeding is located in this judicial district.

8 10. Plaintiffs have satisfied each and every exhaustion-of-remedies requirement that
9 must be satisfied in order to maintain this proceeding. Alternatively, no exhaustion-of-remedies
10 requirement may be applied to Plaintiffs.

11 11. Plaintiffs have no plain, speedy, adequate remedy in the ordinary course of law
12 since Plaintiffs, their respective members, and other members of the public will suffer
13 irreparable harm as a result of Defendants’ violations of federal law as alleged in this pleading.
14 Defendants’ violations rest on the failure to satisfy a clear, present, ministerial duty to act in
15 accordance with federal law.

16 12. Plaintiffs have a beneficial right and interest in Defendants’ fulfillment of all their
17 legal duties, as alleged in this pleading.

18 **FIRST CLAIM:**
19 **Violation of National Historic Preservation Act--Ivanpah Project**
20 **(Against All Defendants except Kalish, Goodro, and Trost)**

21 13. Paragraphs 1 through 12 are fully incorporated into this paragraph.

22 14. NHPA Section 101(d)(6)(B) provides as follows: “(A) Properties of traditional
23 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
24 determined to be eligible for inclusion on the National Register. (B) In carrying out its
25 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
26 tribe or Native Hawaiian organization that attaches religious and cultural significance to
27 properties described in subparagraph (A).” NHPA Section 106 provides as follows: “The head
28 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
assisted undertaking in any State and the head of any Federal department or independent agency

1 having authority to license any undertaking shall, prior to the approval of the expenditure of any
2 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
3 into account the effect of the undertaking on any district, site, building, structure, or object that
4 is included in or eligible for inclusion in the National Register. The head of any such Federal
5 agency shall afford the Advisory Council on Historic Preservation established under Title II of
6 this Act a reasonable opportunity to comment with regard to such undertaking.”

7 15. Plaintiffs, both separately and collectively, attach religious and cultural
8 significance to the federal (public) land that will be affected by the Ivanpah Project. This land
9 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
10 Plaintiffs will be seriously harmed by Defendants’ failure to comply with NHPA.

11 16. Under *Amendment No. 1* (Exhibit “A”), Defendants were required to perform the
12 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
13 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
14 of Plaintiffs (among others).

15 17. Defendants failed to perform the NHPA-prescribed consultations for the Ivanpah
16 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
17 of discretion, or otherwise not in accordance with law as required by the APA.

18 18. Plaintiffs, their respective members, and other members of the public have been
19 harmed as a result of Defendants’ violations of NHPA and the APA because they have been
20 denied the benefits and protections provided by compliance with those laws. By way of
21 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
22 approved and are carrying out the Ivanpah Project were not fully informed about the traditional
23 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
24 land that will be affected by the Ivanpah Project.

25 **SECOND CLAIM:**

26 **Violation of National Environmental Policy Act--Ivanpah Project
(Against All Defendants except Kalish, Goodro, and Trost)**

27 19. Paragraphs 1 through 18 are fully incorporated into this paragraph.
28

20. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out. In general, the EIS must adequately address (i) the proposed action's environmental impact, (ii) any adverse environmental effects that cannot be avoided if the proposed action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

21. Defendants have not prepared an adequate EIS for the Ivanpah Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

22. Defendants' failure to prepare an adequate EIS for the Ivanpah Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

23. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

THIRD CLAIM:
Violation of National Environmental Policy Act--Ivanpah Project
(Against All Defendants except Kalish, Goodro, and Trost)

24. Paragraphs 1 through 23 are fully incorporated into this paragraph.

27. Defendants did not prepare a programmatic EIS for the Projects.

29. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the programmatic impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to approve and carry out the Ivanpah Project.

30. Paragraphs 1 through 29 are fully incorporated into this paragraph.

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1 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
2 may permit Federal departments and agencies to use, occupy, and develop public lands only
3 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
4 and, where the proposed use and development are similar or closely related to the programs of
5 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
6 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
7 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
8 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
9 the responsibility and authority of the States for management of fish and resident wildlife.
10 However, the Secretary concerned may designate areas of public land and of lands in the
11 National Forest System where, and establish periods when, no hunting or fishing will be
12 permitted for reasons of public safety, administration, or compliance with provisions of
13 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
14 hunting and fishing pursuant to this section shall be put into effect only after consultation with
15 the appropriate State fish and game department. Nothing in this Act shall modify or change any
16 provision of Federal law relating to migratory birds or to endangered or threatened species.
17 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
18 in the last sentence of this paragraph, no provision of this section or any other section of this Act
19 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
20 under that Act, including, but not limited to, rights of ingress and egress. In managing the
21 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
22 unnecessary or undue degradation of the lands.”

23 32. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
24 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
25 range plan for the management, use, development, and protection of the public lands within the
26 California Desert Conservation Area. Such plan shall take into account the principles of
27 multiple use and sustained yield in providing for resource use and development, including, but
28 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.

1 Such plan shall be completed and implementation there-of initiated on or before September 30,
2 1980."

3 33. FLPMA Section 601(f) provides as follows: "Subject to valid existing rights,
4 nothing in this Act shall affect the applicability of the United States mining laws on the public
5 lands within the California Desert Conservation Area, except that all mining claims located on
6 public lands within the California Desert Conservation Area shall be subject to such reasonable
7 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
8 issued on any such mining claim shall recite this limitation and continue to be subject to such
9 regulations. Such regulations shall provide for such measures as may be reason-able to protect
10 the scenic, scientific, and environmental values of the public lands of the California Desert
11 Conservation Area against undue impairment, and to assure against pollution of the streams and
12 waters within the California Desert Conservation Area."

13 34. Defendants have not complied with FLPMA as it relates to the Ivanpah Project
14 even though it is located on federal (public) land and is within the California Desert
15 Conservation Area and subject to the CDCA Plan.

16 35. Defendants' failure to comply with the CDCA Plan and take all action necessary
17 to prevent unnecessary or undue degradation of the federal (public) land affected when they
18 approved the Ivanpah Project was contrary to FLPMA and arbitrary, capricious, an abuse of
19 discretion, or otherwise not in accordance with law as required by the APA.

20 36. Plaintiffs, their respective members, and other members of the public have been
21 harmed as a result of Defendants' violations of FLPMA and the APA because they have been
22 denied the benefits and protections provided by compliance with those laws. By way of
23 example and without limitation, Plaintiff, its members, and the public will have to endure
24 unnecessary or undue degradation of the federal (public) land affected by the Ivanpah Project
25 and will lose the protections provided for this land by the CDCA Plan.

26 **FIFTH CLAIM:**

27 **Violation of Native American Graves Protection & Repatriation Act--Ivanpah Project**
28 **(Against All Defendants except Kalish, Goodro, and Trost)**

37. Paragraphs 1 through 36 are fully incorporated into this paragraph.

1 38. Section 3(b) of the NAGPRA provides as follows: "Native American cultural
2 items not claimed under subsection (a) of this section shall be disposed of in accordance with
3 regulations promulgated by the Secretary [of the Interior] in consultation with the review
4 committee established under section [8] of this [Act], Native American groups, representatives
5 of museums and the scientific community."

6 39. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
7 or excavation of Native American cultural items from Federal or tribal lands for purposes of
8 discovery, study, or removal of such items is permitted only if--

9 "(1) such items are excavated or removed pursuant to a permit issued
10 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
11 this [Act];

12 "(2) such items are excavated or removed after consultation with or, in the
13 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
14 Hawaiian organization;

15 "(3) the ownership and right of control of the disposition of such items
16 shall be as provided in subsections (a) and (b) of this section; and

17 "(4) proof of consultation or consent under paragraph (2) is
18 shown."

19 40. Defendants' approval of the Ivanpah Project will result in the intentional
20 excavation, disposal, or other removal of Native American cultural items (including human
21 remains) known to be or strongly suspected of being on the site of the Project without
22 compliance with the conditions necessary for excavation, disposal, or other removal. By way
23 of example and not limitation, Defendants have not consulted with or obtained the consent of
24 the Indian tribe whose cultural remains or located on the site of the Project.

25 41. Defendants' failure to consult with and obtain the consent of the appropriate
26 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
27 items (including human remains) known to be or strongly suspected of being on the site of the
28

1 Ivanpah Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
2 or otherwise not in accordance with law as required by the APA.

3 42. Plaintiffs, their respective members, and other members of the public have been
4 harmed as a result of Defendants' violations of the NAGPRA and the APA because they have
5 been denied the benefits and protections provided by compliance with those laws. By way of
6 example and without limitation, Plaintiff, its members, and the public (including the appropriate
7 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
8 cultural items (including human remains) located on the site of the Ivanpah Project without the
9 necessary consultation and consent prior to Defendants' approval of the Project.

10 **SIXTH CLAIM:**
11 **Violation of National Historic Preservation Act--Genesis Project**
(Against All Defendants except Lee, Goodro, and Trost)

12 43. Paragraphs 1 through 42 are fully incorporated into this paragraph.

13 44. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional
14 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
15 determined to be eligible for inclusion on the National Register. (B) In carrying out its
16 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
17 tribe or Native Hawaiian organization that attaches religious and cultural significance to
18 properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head
19 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
20 assisted undertaking in any State and the head of any Federal department or independent agency
21 having authority to license any undertaking shall, prior to the approval of the expenditure of any
22 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
23 into account the effect of the undertaking on any district, site, building, structure, or object that
24 is included in or eligible for inclusion in the National Register. The head of any such Federal
25 agency shall afford the Advisory Council on Historic Preservation established under Title II of
26 this Act a reasonable opportunity to comment with regard to such undertaking."

27 45. Plaintiffs, both separately and collectively, attach religious and cultural
28 significance to the federal (public) land that will be affected by the Genesis Project. This land

1 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
2 Plaintiffs will be seriously harmed by Defendants' failure to comply with NHPA.

3 46. Under *Amendment No. 1* (Exhibit "A"), Defendants were required to perform the
4 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
5 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
6 of Plaintiffs (among others).

7 47. Defendants failed to perform the NHPA-prescribed consultations for the Genesis
8 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
9 of discretion, or otherwise not in accordance with law as required by the APA.

10 48. Plaintiffs, their respective members, and other members of the public have been
11 harmed as a result of Defendants' violations of NHPA and the APA because they have been
12 denied the benefits and protections provided by compliance with those laws. By way of
13 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
14 approved and are carrying out the Genesis Project were not fully informed about the traditional
15 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
16 land that will be affected by the Genesis Project.

17 **SEVENTH CLAIM:**
18 **Violation of National Environmental Policy Act--Genesis Project**
19 **(Against All Defendants except Lee, Goodro, and Trost)**

20 49. Paragraphs 1 through 48 are fully incorporated into this paragraph.

21 50. NEPA requires every federal agency to prepare an environmental impact
22 statement ("EIS") for every major action significantly affecting the quality of the human
23 environment that the agency proposes to approve or carry out. In general, the EIS must
24 adequately address (i) the proposed action's environmental impact, (ii) any adverse
25 environmental effects that cannot be avoided if the proposed action is implemented, (iii)
26 alternatives to the proposed action, (iv) the relationship between local short-term uses of the
27 environment and the maintenance and enhancement of long-term productivity, (v) any
28 irreversible and irretrievable commitments of resources that would be involved in the proposed

1 action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative
2 impacts for the proposed action.

3 51. Defendants have not prepared an adequate EIS for the Genesis Project even
4 though it is a major action proposed to be approved and carried out by at least one federal
5 agency and has the potential to affect the quality of the human environment, including but not
6 limited to the environment in the California Desert Conservation Area.

7 52. Defendants' failure to prepare an adequate EIS for the Genesis Project was
8 contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with law as required by the APA.

10 53. Plaintiffs, their respective members, and other members of the public have been
11 harmed as a result of Defendants' violations of NEPA and the APA because they have been
12 denied the benefits and protections provided by compliance with those laws. By way of
13 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
14 approved and are carrying out the Project were not fully informed about the impacts of,
15 mitigation measures for, and alternatives to the Project prior to the decision to approve and carry
16 out the Project.

17 **EIGHTH CLAIM:**

18 **Violation of National Environmental Policy Act--Genesis Project
(Against All Defendants except Lee, Goodro, and Trost)**

19 54. Paragraphs 1 through 53 are fully incorporated into this paragraph.

20 55. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the
21 environmental consequences of several proposals that will have cumulative or synergistic
22 environmental impacts upon a region to be considered together in a programmatic EIS. Section
23 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall
24 prepare statements on broad actions so that they are relevant to policy and are timed to coincide
25 with meaningful points in agency planning and decisionmaking."

26 56. Each of the Projects is a major federal action, and together they constitute broad
27 action by Defendants.

28 57. Defendants did not prepare a programmatic EIS for the Projects.

NINTH CLAIM:
Violation of Federal Land Policy and Management Act--Genesis Project
(Against All Defendants except Lee, Goodro, and Trost)

61. FLPMA Section 302(b) provides as follows: "In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife.

1 However, the Secretary concerned may designate areas of public land and of lands in the
2 National Forest System where, and establish periods when, no hunting or fishing will be
3 permitted for reasons of public safety, administration, or compliance with provisions of
4 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
5 hunting and fishing pursuant to this section shall be put into effect only after consultation with
6 the appropriate State fish and game department. Nothing in this Act shall modify or change any
7 provision of Federal law relating to migratory birds or to endangered or threatened species.
8 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
9 in the last sentence of this paragraph, no provision of this section or any other section of this Act
10 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
11 under that Act, including, but not limited to, rights of ingress and egress. In managing the
12 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
13 unnecessary or undue degradation of the lands.”

14 62. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
15 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
16 range plan for the management, use, development, and protection of the public lands within the
17 California Desert Conservation Area. Such plan shall take into account the principles of
18 multiple use and sustained yield in providing for resource use and development, including, but
19 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
20 Such plan shall be completed and implementation there-of initiated on or before September 30,
21 1980.”

22 63. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
23 nothing in this Act shall affect the applicability of the United States mining laws on the public
24 lands within the California Desert Conservation Area, except that all mining claims located on
25 public lands within the California Desert Conservation Area shall be subject to such reasonable
26 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
27 issued on any such mining claim shall recite this limitation and continue to be subject to such
28 regulations. Such regulations shall provide for such measures as may be reason-able to protect

1 the scenic, scientific, and environmental values of the public lands of the California Desert
 2 Conservation Area against undue impairment, and to assure against pollution of the streams and
 3 waters within the California Desert Conservation Area.”

4 64 Defendants have not complied with FLPMA as it relates to the Genesis Project
 5 even though it is located on federal (public) land and is within the California Desert
 6 Conservation Area and subject to the CDCA Plan.

7 65. Defendants’ failure to comply with the CDCA Plan and take all action necessary
 8 to prevent unnecessary or undue degradation of the federal (public) land affected when they
 9 approved the Genesis Project was contrary to FLPMA and arbitrary, capricious, an abuse of
 10 discretion, or otherwise not in accordance with law as required by the APA.

11 66. Plaintiffs, their respective members, and other members of the public have been
 12 harmed as a result of Defendants’ violations of FLPMA and the APA because they have been
 13 denied the benefits and protections provided by compliance with those laws. By way of
 14 example and without limitation, Plaintiff, its members, and the public will have to endure
 15 unnecessary or undue degradation of the federal (public) land affected by the Genesis Project
 16 and will lose the protections provided for this land by the CDCA Plan.

17 **TENTH CLAIM:**
 18 **Violation of Native American Graves Protection & Repatriation Act--Genesis Project**
 19 **(Against All Defendants except Lee, Goodro, and Trost)**

20 67. Paragraphs 1 through 66 are fully incorporated into this paragraph.

21 68. Section 3(b) of the NAGPRA provides as follows: “Native American cultural
 22 items not claimed under subsection (a) of this section shall be disposed of in accordance with
 23 regulations promulgated by the Secretary [of the Interior] in consultation with the review
 24 committee established under section [8] of this [Act], Native American groups, representatives
 25 of museums and the scientific community.”

26 69. Section 3(c) of the NAGPRA provides as follows: “The intentional removal from
 27 or excavation of Native American cultural items from Federal or tribal lands for purposes of
 28 discovery, study, or removal of such items is permitted only if--

1 “(1) such items are excavated or removed pursuant to a permit issued
2 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
3 this [Act];

4 “(2) such items are excavated or removed after consultation with or, in the
5 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
6 Hawaiian organization;

7 “(3) the ownership and right of control of the disposition of such items
8 shall be as provided in subsections (a) and (b) of this section; and

9 “(4) proof of consultation or consent under paragraph (2) is
10 shown.”

11 70. Defendants’ approval of the Genesis Project will result in the intentional
12 excavation, disposal, or other removal of Native American cultural items (including human
13 remains) known to be or strongly suspected of being on the site of the Project without
14 compliance with the conditions necessary for excavation, disposal, or other removal. By way
15 of example and not limitation, Defendants have not consulted with or obtained the consent of
16 the Indian tribe whose cultural remains or located on the site of the Project.

17 71. Defendants’ failure to consult with and obtain the consent of the appropriate
18 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
19 items (including human remains) known to be or strongly suspected of being on the site of the
20 Genesis Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
21 or otherwise not in accordance with law as required by the APA.

22 72. Plaintiffs, their respective members, and other members of the public have been
23 harmed as a result of Defendants’ violations of the NAGPRA and the APA because they have
24 been denied the benefits and protections provided by compliance with those laws. By way of
25 example and without limitation, Plaintiff, its members, and the public (including the appropriate
26 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
27 cultural items (including human remains) located on the site of the Genesis Project without the
28 necessary consultation and consent prior to Defendants’ approval of the Project.

ELEVENTH CLAIM:
Violation of National Historic Preservation Act--Imperial Project
(Against All Defendants except Lee, Kalish, and Trost)

73. Paragraphs 1 through 72 are fully incorporated into this paragraph.

74. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register. (B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."

75. Plaintiffs, both separately and collectively, attach religious and cultural significance to the federal (public) land that will be affected by the Imperial Project. This land has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently, Plaintiffs will be seriously harmed by Defendants' failure to comply with NHPA.

76. Under *Amendment No. 1* (Exhibit "A"), Defendants were required to perform the NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit of Plaintiffs (among others).

77. Defendants failed to perform the NHPA-prescribed consultations for the Imperial Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

79. Paragraphs 1 through 78 are fully incorporated into this paragraph.

81. Defendants have not prepared an adequate EIS for the Imperial Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

82. Defendants' failure to prepare an adequate EIS for the Imperial Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

1 83. Plaintiffs, their respective members, and other members of the public have been
 2 harmed as a result of Defendants' violations of NEPA and the APA because they have been
 3 denied the benefits and protections provided by compliance with those laws. By way of
 4 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
 5 approved and are carrying out the Project were not fully informed about the impacts of,
 6 mitigation measures for, and alternatives to the Project prior to the decision to approve and carry
 7 out the Project.

8 **THIRTEENTH CLAIM:**
 9 **Violation of National Environmental Policy Act--Imperial Project**
 (Against All Defendants except Lee, Kalish, and Trost)

10 84. Paragraphs 1 through 83 are fully incorporated into this paragraph.

11 85. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the
 12 environmental consequences of several proposals that will have cumulative or synergistic
 13 environmental impacts upon a region to be considered together in a programmatic EIS. Section
 14 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall
 15 prepare statements on broad actions so that they are relevant to policy and are timed to coincide
 16 with meaningful points in agency planning and decisionmaking."

17 86. Each of the Projects is a major federal action, and together they constitute broad
 18 action by Defendants.

19 87. Defendants did not prepare a programmatic EIS for the Projects.

20 88. With regard to the Imperial Project, Defendants' failure to prepare a programmatic
 21 EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or
 22 otherwise not in accordance with law as required by the APA.

23 89. Plaintiffs, their respective members, and other members of the public have been
 24 harmed as a result of Defendants' violations of NEPA and the APA because they have been
 25 denied the benefits and protections provided by compliance with those laws. By way of
 26 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
 27 approved and are carrying out the Project were not fully informed about the programmatic
 28

1 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
2 approve and carry out the Imperial Project.

3 **FOURTEENTH CLAIM:**
4 **Violation of Federal Land Policy and Management Act--Imperial Project**
5 **(Against All Defendants except Lee, Kalish, and Trost)**

6 90. Paragraphs 1 through 89 are fully incorporated into this paragraph.

7 91. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
8 Secretary shall, subject to this Act and other applicable law and under such terms and conditions
9 as are consistent with such law, regulate, through easements, permits, leases, licenses, published
10 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
11 development of the public lands, including, but not limited to, long-term leases to permit
12 individuals to utilize public lands for habitation, cultivation, and the development of small trade
13 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
14 may permit Federal departments and agencies to use, occupy, and develop public lands only
15 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
16 and, where the proposed use and development are similar or closely related to the programs of
17 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
18 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
19 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
20 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
21 the responsibility and authority of the States for management of fish and resident wildlife.
22 However, the Secretary concerned may designate areas of public land and of lands in the
23 National Forest System where, and establish periods when, no hunting or fishing will be
24 permitted for reasons of public safety, administration, or compliance with provisions of
25 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
26 hunting and fishing pursuant to this section shall be put into effect only after consultation with
27 the appropriate State fish and game department. Nothing in this Act shall modify or change any
28 provision of Federal law relating to migratory birds or to endangered or threatened species.
Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and

1 in the last sentence of this paragraph, no provision of this section or any other section of this Act
2 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
3 under that Act, including, but not limited to, rights of ingress and egress. In managing the
4 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
5 unnecessary or undue degradation of the lands.”

6 92. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
7 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
8 range plan for the management, use, development, and protection of the public lands within the
9 California Desert Conservation Area. Such plan shall take into account the principles of
10 multiple use and sustained yield in providing for resource use and development, including, but
11 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
12 Such plan shall be completed and implementation there-of initiated on or before September 30,
13 1980.”

14 93. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
15 nothing in this Act shall affect the applicability of the United States mining laws on the public
16 lands within the California Desert Conservation Area, except that all mining claims located on
17 public lands within the California Desert Conservation Area shall be subject to such reasonable
18 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
19 issued on any such mining claim shall recite this limitation and continue to be subject to such
20 regulations. Such regulations shall provide for such measures as may be reason-able to protect
21 the scenic, scientific, and environmental values of the public lands of the California Desert
22 Conservation Area against undue impairment, and to assure against pollution of the streams and
23 waters within the California Desert Conservation Area.”

24 94. Defendants have not complied with FLPMA as it relates to the Imperial Project
25 even though it is located on federal (public) land and is within the California Desert
26 Conservation Area and subject to the CDCA Plan.

27 95. Defendants’ failure to comply with the CDCA Plan and take all action necessary
28 to prevent unnecessary or undue degradation of the federal (public) land affected when they

1 approved the Imperial Project was contrary to FLPMA and arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with law as required by the APA.

3 96. Plaintiffs, their respective members, and other members of the public have been
4 harmed as a result of Defendants' violations of FLPMA and the APA because they have been
5 denied the benefits and protections provided by compliance with those laws. By way of
6 example and without limitation, Plaintiff, its members, and the public will have to endure
7 unnecessary or undue degradation of the federal (public) land affected by the Imperial Project
8 and will lose the protections provided for this land by the CDCA Plan.

9 **FIFTEEN CLAIM:**

10 **Violation of Native American Graves Protection & Repatriation Act--Imperial Project
(Against All Defendants except Lee, Kalish, and Trost)**

11 97. Paragraphs 1 through 96 are fully incorporated into this paragraph.

12 98. Section 3(b) of the NAGPRA provides as follows: "Native American cultural
13 items not claimed under subsection (a) of this section shall be disposed of in accordance with
14 regulations promulgated by the Secretary [of the Interior] in consultation with the review
15 committee established under section [8] of this [Act], Native American groups, representatives
16 of museums and the scientific community."

17 99. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
18 or excavation of Native American cultural items from Federal or tribal lands for purposes of
19 discovery, study, or removal of such items is permitted only if--

20 "(1) such items are excavated or removed pursuant to a permit issued
21 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
22 this [Act];

23 "(2) such items are excavated or removed after consultation with or, in the
24 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
25 Hawaiian organization;

26 "(3) the ownership and right of control of the disposition of such items
27 shall be as provided in subsections (a) and (b) of this section; and
28

1 “(4) proof of consultation or consent under paragraph (2) is
2 shown.”

3 100. Defendants’ approval of the Imperial Project will result in the intentional
4 excavation, disposal, or other removal of Native American cultural items (including human
5 remains) known to be or strongly suspected of being on the site of the Project without
6 compliance with the conditions necessary for excavation, disposal, or other removal. By way
7 of example and not limitation, Defendants have not consulted with or obtained the consent of
8 the Indian tribe whose cultural remains or located on the site of the Project.

9 101. Defendants’ failure to consult with and obtain the consent of the appropriate
10 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
11 items (including human remains) known to be or strongly suspected of being on the site of the
12 Imperial Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
13 or otherwise not in accordance with law as required by the APA.

14 102. Plaintiffs, their respective members, and other members of the public have been
15 harmed as a result of Defendants’ violations of the NAGPRA and the APA because they have
16 been denied the benefits and protections provided by compliance with those laws. By way of
17 example and without limitation, Plaintiff, its members, and the public (including the appropriate
18 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
19 cultural items (including human remains) located on the site of the Imperial Project without the
20 necessary consultation and consent prior to Defendants’ approval of the Project.

21 **SIXTEENTH CLAIM:**

22 **Violation of National Historic Preservation Act--Chevron Project**
23 **(Against All Defendants except Lee, Kalish, and Goodro)**

24 103. Paragraphs 1 through 102 are fully incorporated into this paragraph.

25 104. NHPA Section 101(d)(6)(B) provides as follows: “(A) Properties of traditional
26 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
27 determined to be eligible for inclusion on the National Register. (B) In carrying out its
28 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
tribe or Native Hawaiian organization that attaches religious and cultural significance to

1 properties described in subparagraph (A).” NHPA Section 106 provides as follows: “The head
2 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
3 assisted undertaking in any State and the head of any Federal department or independent agency
4 having authority to license any undertaking shall, prior to the approval of the expenditure of any
5 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
6 into account the effect of the undertaking on any district, site, building, structure, or object that
7 is included in or eligible for inclusion in the National Register. The head of any such Federal
8 agency shall afford the Advisory Council on Historic Preservation established under Title II of
9 this Act a reasonable opportunity to comment with regard to such undertaking.”

10 105. Plaintiffs, both separately and collectively, attach religious and cultural
11 significance to the federal (public) land that will be affected by the Chevron Project. This land
12 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
13 Plaintiffs will be seriously harmed by Defendants’ failure to comply with NHPA.

14 106. Under *Amendment No. 1* (Exhibit “A”), Defendants were required to perform the
15 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
16 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
17 of Plaintiffs (among others).

18 107. Defendants failed to perform the NHPA-prescribed consultations for the Chevron
19 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
20 of discretion, or otherwise not in accordance with law as required by the APA.

21 108. Plaintiffs, their respective members, and other members of the public have been
22 harmed as a result of Defendants’ violations of NHPA and the APA because they have been
23 denied the benefits and protections provided by compliance with those laws. By way of
24 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
25 approved and are carrying out the Chevron Project were not fully informed about the traditional
26 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
27 land that will be affected by the Chevron Project.

SEVENTEENTH CLAIM:
Violation of National Environmental Policy Act--Chevron Project
(Against All Defendants except Lee, Kalish, and Goodro)

109. Paragraphs 1 through 108 are fully incorporated into this paragraph.

110. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out. In general, the EIS must adequately address (i) the proposed action's environmental impact, (ii) any adverse environmental effects that cannot be avoided if the proposed action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

111. Defendants have not prepared an adequate EIS for the Chevron Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

112. Defendants' failure to prepare an adequate EIS for the Chevron Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

113. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

EIGHTEENTH CLAIM:
Violation of National Environmental Policy Act--Chevron Project
(Against All Defendants except Lee, Kalish, and Goodro)

114. Paragraphs 1 through 113 are fully incorporated into this paragraph.

115. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the environmental consequences of several proposals that will have cumulative or synergistic environmental impacts upon a region to be considered together in a programmatic EIS. Section 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking."

116. Each of the Projects is a major federal action, and together they constitute broad action by Defendants.

117. Defendants did not prepare a programmatic EIS for the Projects.

118. With regard to the Chevron Project, Defendants' failure to prepare a programmatic EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

119. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the programmatic impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to approve and carry out the Chevron Project.

NINETEENTH CLAIM:
Violation of Federal Land Policy and Management Act--Chevron Project
(Against All Defendants except Lee, Kalish, and Goodro)

120. Paragraphs 1 through 119 are fully incorporated into this paragraph.

121. FLPMA Section 302(b) provides as follows: "In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published

1 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
 2 development of the public lands, including, but not limited to, long-term leases to permit
 3 individuals to utilize public lands for habitation, cultivation, and the development of small trade
 4 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
 5 may permit Federal departments and agencies to use, occupy, and develop public lands only
 6 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
 7 and, where the proposed use and development are similar or closely related to the programs of
 8 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
 9 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
 10 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
 11 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
 12 the responsibility and authority of the States for management of fish and resident wildlife.
 13 However, the Secretary concerned may designate areas of public land and of lands in the
 14 National Forest System where, and establish periods when, no hunting or fishing will be
 15 permitted for reasons of public safety, administration, or compliance with provisions of
 16 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
 17 hunting and fishing pursuant to this section shall be put into effect only after consultation with
 18 the appropriate State fish and game department. Nothing in this Act shall modify or change any
 19 provision of Federal law relating to migratory birds or to endangered or threatened species.
 20 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
 21 in the last sentence of this paragraph, no provision of this section or any other section of this Act
 22 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
 23 under that Act, including, but not limited to, rights of ingress and egress. In managing the
 24 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
 25 unnecessary or undue degradation of the lands."

26 122. FLPMA Section 601(d) provides as follows: "The Secretary [of the Interior], in
 27 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
 28 range plan for the management, use, development, and protection of the public lands within the

1 California Desert Conservation Area. Such plan shall take into account the principles of
2 multiple use and sustained yield in providing for resource use and development, including, but
3 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
4 Such plan shall be completed and implementation there-of initiated on or before September 30,
5 1980."

6 123. FLPMA Section 601(f) provides as follows: "Subject to valid existing rights,
7 nothing in this Act shall affect the applicability of the United States mining laws on the public
8 lands within the California Desert Conservation Area, except that all mining claims located on
9 public lands within the California Desert Conservation Area shall be subject to such reasonable
10 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
11 issued on any such mining claim shall recite this limitation and continue to be subject to such
12 regulations. Such regulations shall provide for such measures as may be reason-able to protect
13 the scenic, scientific, and environmental values of the public lands of the California Desert
14 Conservation Area against undue impairment, and to assure against pollution of the streams and
15 waters within the California Desert Conservation Area."

16 124. Defendants have not complied with FLPMA as it relates to the Chevron Project
17 even though it is located on federal (public) land and is within the California Desert
18 Conservation Area and subject to the CDCA Plan.

19 125. Defendants' failure to comply with the CDCA Plan and take all action necessary
20 to prevent unnecessary or undue degradation of the federal (public) land affected when they
21 approved the Chevron Project was contrary to FLPMA and arbitrary, capricious, an abuse of
22 discretion, or otherwise not in accordance with law as required by the APA.

23 126. Plaintiffs, their respective members, and other members of the public have been
24 harmed as a result of Defendants' violations of FLPMA and the APA because they have been
25 denied the benefits and protections provided by compliance with those laws. By way of
26 example and without limitation, Plaintiff, its members, and the public will have to endure
27 unnecessary or undue degradation of the federal (public) land affected by the Chevron Project
28 and will lose the protections provided for this land by the CDCA Plan.

TWENTIETH CLAIM:
Violation of Native American Graves Protection & Repatriation Act--Chevron Project
(Against All Defendants except Lee, Kalish, and Goodro)

127. Paragraphs 1 through 126 are fully incorporated into this paragraph.

128. Section 3(b) of the NAGPRA provides as follows: "Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary [of the Interior] in consultation with the review committee established under section [8] of this [Act], Native American groups, representatives of museums and the scientific community."

129. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if--

"(1) such items are excavated or removed pursuant to a permit issued under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with this [Act];

"(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

"(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

"(4) proof of consultation or consent under paragraph (2) is shown."

130. Defendants' approval of the Chevron Project will result in the intentional excavation, disposal, or other removal of Native American cultural items (including human remains) known to be or strongly suspected of being on the site of the Project without compliance with the conditions necessary for excavation, disposal, or other removal. By way of example and not limitation, Defendants have not consulted with or obtained the consent of the Indian tribe whose cultural remains or located on the site of the Project.

131. Defendants' failure to consult with and obtain the consent of the appropriate Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural items (including human remains) known to be or strongly suspected of being on the site of the Chevron Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

132. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of the NAGPRA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, and the public (including the appropriate Indian tribe) will have to endure the excavation, disposal, or other removal of Native American cultural items (including human remains) located on the site of the Chevron Project without the necessary consultation and consent prior to Defendants' approval of the Project.

TWENTY-FIRST CLAIM:

**Violation of National Historic Preservation Act--Calico Project
(Against All Defendants except Lee, Kalish, and Goodro)**

133. Paragraphs 1 through 132 are fully incorporated into this paragraph.

134. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register. (B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal

1 agency shall afford the Advisory Council on Historic Preservation established under Title II of
2 this Act a reasonable opportunity to comment with regard to such undertaking.”

3 135. Plaintiffs, both separately and collectively, attach religious and cultural
4 significance to the federal (public) land that will be affected by the Calico Project. This land
5 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
6 Plaintiffs will be seriously harmed by Defendants’ failure to comply with NHPA.

7 136. Under *Amendment No. 1* (Exhibit “A”), Defendants were required to perform the
8 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
9 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
10 of Plaintiffs (among others).

11 137. Defendants failed to perform the NHPA-prescribed consultations for the Calico
12 Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse
13 of discretion, or otherwise not in accordance with law as required by the APA.

14 138. Plaintiffs, their respective members, and other members of the public have been
15 harmed as a result of Defendants’ violations of NHPA and the APA because they have been
16 denied the benefits and protections provided by compliance with those laws. By way of
17 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
18 approved and are carrying out the Calico Project were not fully informed about the traditional
19 religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public)
20 land that will be affected by the Calico Project.

21 **TWENTY-SECOND CLAIM:**
22 **Violation of National Environmental Policy Act--Calico Project**
23 **(Against All Defendants except Lee, Kalish, and Goodro)**

24 139. Paragraphs 1 through 138 are fully incorporated into this paragraph.

25 140. NEPA requires every federal agency to prepare an environmental impact
26 statement (“EIS”) for every major action significantly affecting the quality of the human
27 environment that the agency proposes to approve or carry out. In general, the EIS must
28 adequately address (i) the proposed action’s environmental impact, (ii) any adverse
environmental effects that cannot be avoided if the proposed action is implemented, (iii)

alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

141. Defendants have not prepared an adequate EIS for the Calico Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

142. Defendants' failure to prepare an adequate EIS for the Calico Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

143. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

TWENTY-THIRD CLAIM:
Violation of National Environmental Policy Act--Calico Project
(Against All Defendants except Lee, Kalish, and Goodro)

144. Paragraphs 1 through 143 are fully incorporated into this paragraph.

145. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the environmental consequences of several proposals that will have cumulative or synergistic environmental impacts upon a region to be considered together in a programmatic EIS. Section 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking."

1 146. Each of the Projects is a major federal action, and together they constitute broad
2 action by Defendants.

3 147. Defendants did not prepare a programmatic EIS for the Projects.

4 148. With regard to the Calico Project, Defendants' failure to prepare a programmatic
5 EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or
6 otherwise not in accordance with law as required by the APA.

7 149. Plaintiffs, their respective members, and other members of the public have been
8 harmed as a result of Defendants' violations of NEPA and the APA because they have been
9 denied the benefits and protections provided by compliance with those laws. By way of
10 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
11 approved and are carrying out the Project were not fully informed about the programmatic
12 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
13 approve and carry out the Calico Project.

14 **TWENTY-FOURTH CLAIM:**

15 **Violation of Federal Land Policy and Management Act--Calico Project**
16 **(Against All Defendants except Lee, Kalish, and Goodro)**

17 150. Paragraphs 1 through 149 are fully incorporated into this paragraph.

18 151. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
19 Secretary shall, subject to this Act and other applicable law and under such terms and conditions
20 as are consistent with such law, regulate, through easements, permits, leases, licenses, published
21 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
22 development of the public lands, including, but not limited to, long-term leases to permit
23 individuals to utilize public lands for habitation, cultivation, and the development of small trade
24 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
25 may permit Federal departments and agencies to use, occupy, and develop public lands only
26 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
27 and, where the proposed use and development are similar or closely related to the programs of
28 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as

1 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
2 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
3 the responsibility and authority of the States for management of fish and resident wildlife.
4 However, the Secretary concerned may designate areas of public land and of lands in the
5 National Forest System where, and establish periods when, no hunting or fishing will be
6 permitted for reasons of public safety, administration, or compliance with provisions of
7 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
8 hunting and fishing pursuant to this section shall be put into effect only after consultation with
9 the appropriate State fish and game department. Nothing in this Act shall modify or change any
10 provision of Federal law relating to migratory birds or to endangered or threatened species.
11 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
12 in the last sentence of this paragraph, no provision of this section or any other section of this Act
13 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
14 under that Act, including, but not limited to, rights of ingress and egress. In managing the
15 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
16 unnecessary or undue degradation of the lands.”

17 152. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
18 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
19 range plan for the management, use, development, and protection of the public lands within the
20 California Desert Conservation Area. Such plan shall take into account the principles of
21 multiple use and sustained yield in providing for resource use and development, including, but
22 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
23 Such plan shall be completed and implementation there-of initiated on or before September 30,
24 1980.”

25 153. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
26 nothing in this Act shall affect the applicability of the United States mining laws on the public
27 lands within the California Desert Conservation Area, except that all mining claims located on
28 public lands within the California Desert Conservation Area shall be subject to such reasonable

1 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
 2 issued on any such mining claim shall recite this limitation and continue to be subject to such
 3 regulations. Such regulations shall provide for such measures as may be reason-able to protect
 4 the scenic, scientific, and environmental values of the public lands of the California Desert
 5 Conservation Area against undue impairment, and to assure against pollution of the streams and
 6 waters within the California Desert Conservation Area.”

7 154. Defendants have not complied with FLPMA as it relates to the Calico Project
 8 even though it is located on federal (public) land and is within the California Desert
 9 Conservation Area and subject to the CDCA Plan.

10 155. Defendants’ failure to comply with the CDCA Plan and take all action necessary
 11 to prevent unnecessary or undue degradation of the federal (public) land affected when they
 12 approved the Calico Project was contrary to FLPMA and arbitrary, capricious, an abuse of
 13 discretion, or otherwise not in accordance with law as required by the APA.

14 156. Plaintiffs, their respective members, and other members of the public have been
 15 harmed as a result of Defendants’ violations of FLPMA and the APA because they have been
 16 denied the benefits and protections provided by compliance with those laws. By way of
 17 example and without limitation, Plaintiff, its members, and the public will have to endure
 18 unnecessary or undue degradation of the federal (public) land affected by the Calico Project and
 19 will lose the protections provided for this land by the CDCA Plan.

20 **TWENTY-FIFTH CLAIM:**
 21 **Violation of Native American Graves Protection & Repatriation Act--Calico Project**
 22 **(Against All Defendants except Lee, Kalish, and Goodro)**

23 157. Paragraphs 1 through 156 are fully incorporated into this paragraph.

24 158. Section 3(b) of the NAGPRA provides as follows: “Native American cultural
 25 items not claimed under subsection (a) of this section shall be disposed of in accordance with
 26 regulations promulgated by the Secretary [of the Interior] in consultation with the review
 27 committee established under section [8] of this [Act], Native American groups, representatives
 28 of museums and the scientific community.”

1 159. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from
2 or excavation of Native American cultural items from Federal or tribal lands for purposes of
3 discovery, study, or removal of such items is permitted only if--

4 "(1) such items are excavated or removed pursuant to a permit issued
5 under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with
6 this [Act];

7 "(2) such items are excavated or removed after consultation with or, in the
8 case of tribal lands, consent of the appropriate (if any) Indian tribe or Native
9 Hawaiian organization;

10 "(3) the ownership and right of control of the disposition of such items
11 shall be as provided in subsections (a) and (b) of this section; and

12 "(4) proof of consultation or consent under paragraph (2) is
13 shown."

14 160. Defendants' approval of the Calico Project will result in the intentional
15 excavation, disposal, or other removal of Native American cultural items (including human
16 remains) known to be or strongly suspected of being on the site of the Project without
17 compliance with the conditions necessary for excavation, disposal, or other removal. By way
18 of example and not limitation, Defendants have not consulted with or obtained the consent of
19 the Indian tribe whose cultural remains or located on the site of the Project.

20 161. Defendants' failure to consult with and obtain the consent of the appropriate
21 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
22 items (including human remains) known to be or strongly suspected of being on the site of the
23 Calico Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
24 or otherwise not in accordance with law as required by the APA.

25 162. Plaintiffs, their respective members, and other members of the public have been
26 harmed as a result of Defendants' violations of the NAGPRA and the APA because they have
27 been denied the benefits and protections provided by compliance with those laws. By way of
28 example and without limitation, Plaintiff, its members, and the public (including the appropriate

1 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
 2 cultural items (including human remains) located on the site of the Calico Project without the
 3 necessary consultation and consent prior to Defendants' approval of the Project.

4 **TWENTY-SIXTH CLAIM:**

5 **Violation of National Historic Preservation Act--Blythe Project
 (Against All Defendants except Lee, Trost, and Goodro)**

6 163. Paragraphs 1 through 162 are fully incorporated into this paragraph.

7 164. NHPA Section 101(d)(6)(B) provides as follows: "(A) Properties of traditional
 8 religious and cultural importance to an Indian tribe or Native Hawaiian organization may be
 9 determined to be eligible for inclusion on the National Register. (B) In carrying out its
 10 responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian
 11 tribe or Native Hawaiian organization that attaches religious and cultural significance to
 12 properties described in subparagraph (A)." NHPA Section 106 provides as follows: "The head
 13 of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally
 14 assisted undertaking in any State and the head of any Federal department or independent agency
 15 having authority to license any undertaking shall, prior to the approval of the expenditure of any
 16 Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take
 17 into account the effect of the undertaking on any district, site, building, structure, or object that
 18 is included in or eligible for inclusion in the National Register. The head of any such Federal
 19 agency shall afford the Advisory Council on Historic Preservation established under Title II of
 20 this Act a reasonable opportunity to comment with regard to such undertaking."

21 165. Plaintiffs, both separately and collectively, attach religious and cultural
 22 significance to the federal (public) land that will be affected by the Blythe Project. This land
 23 has traditional religious and cultural importance to Indian tribes and to Plaintiffs. Consequently,
 24 Plaintiffs will be seriously harmed by Defendants' failure to comply with NHPA.

25 166. Under *Amendment No. 1* (Exhibit "A"), Defendants were required to perform the
 26 NHPA-prescribed consultations with Plaintiff LA CUNA. Even in the absence of *Amendment*
 27 *No. 1*, Defendants were required to perform the NHPA-prescribed consultations for the benefit
 28 of Plaintiffs (among others).

167. Defendants failed to perform the NHPA-prescribed consultations for the Blythe Project. Their failure in this regard was contrary to NHPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

168. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NHPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Blythe Project were not fully informed about the traditional religious and cultural importance attached by Plaintiffs and Indian tribes to the federal (public) land that will be affected by the Blythe Project.

TWENTY-SEVENTH CLAIM:
Violation of National Environmental Policy Act--Blythe Project
(Against All Defendants except Lee, Trost, and Goodro)

169. Paragraphs 1 through 168 are fully incorporated into this paragraph.

170. NEPA requires every federal agency to prepare an environmental impact statement ("EIS") for every major action significantly affecting the quality of the human environment that the agency proposes to approve or carry out. In general, the EIS must adequately address (i) the proposed action's environmental impact, (ii) any adverse environmental effects that cannot be avoided if the proposed action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, (v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented, (vi) mitigation measures for the proposed action, and (vii) cumulative impacts for the proposed action.

171. Defendants have not prepared an adequate EIS for the Blythe Project even though it is a major action proposed to be approved and carried out by at least one federal agency and has the potential to affect the quality of the human environment, including but not limited to the environment in the California Desert Conservation Area.

172. Defendants' failure to prepare an adequate EIS for the Blythe Project was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

173. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, the public, and the decision-makers who approved and are carrying out the Project were not fully informed about the impacts of, mitigation measures for, and alternatives to the Project prior to the decision to approve and carry out the Project.

TWENTY-EIGHTH CLAIM:

**Violation of National Environmental Policy Act--Blythe Project
(Against All Defendants except Lee, Trost, and Goodro)**

174. Paragraphs 1 through 173 are fully incorporated into this paragraph.

175. NEPA (under *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)) requires the environmental consequences of several proposals that will have cumulative or synergistic environmental impacts upon a region to be considered together in a programmatic EIS. Section 1502.4(b) of Title 40 of the Code of Federal Regulations provides that federal agencies "shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking."

176. Each of the Projects is a major federal action, and together they constitute broad action by Defendants.

177. Defendants did not prepare a programmatic EIS for the Projects.

178. With regard to the Blythe Project, Defendants' failure to prepare a programmatic EIS for the Projects was contrary to NEPA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

179. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of NEPA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of

1 example and without limitation, Plaintiff, its members, the public, and the decision-makers who
 2 approved and are carrying out the Project were not fully informed about the programmatic
 3 impacts of, mitigation measures for, and alternatives to the Projects prior to the decision to
 4 approve and carry out the Blythe Project.

5 **TWENTY-NINTH CLAIM:**
 6 **Violation of Federal Land Policy and Management Act--Blythe Project**
 7 **(Against All Defendants except Lee, Trost, and Goodro)**

8 180. Paragraphs 1 through 179 are fully incorporated into this paragraph.

9 181. FLPMA Section 302(b) provides as follows: "In managing the public lands, the
 10 Secretary shall, subject to this Act and other applicable law and under such terms and conditions
 11 as are consistent with such law, regulate, through easements, permits, leases, licenses, published
 12 rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and
 13 development of the public lands, including, but not limited to, long-term leases to permit
 14 individuals to utilize public lands for habitation, cultivation, and the development of small trade
 15 or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary
 16 may permit Federal departments and agencies to use, occupy, and develop public lands only
 17 through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act,
 18 and, where the proposed use and development are similar or closely related to the programs of
 19 the Secretary for the public lands involved, cooperative agreements under subsection (b) of
 20 section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as
 21 authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands
 22 or on lands in the National Forest System and adjacent waters or as enlarging or diminishing
 23 the responsibility and authority of the States for management of fish and resident wildlife.
 24 However, the Secretary concerned may designate areas of public land and of lands in the
 25 National Forest System where, and establish periods when, no hunting or fishing will be
 26 permitted for reasons of public safety, administration, or compliance with provisions of
 27 applicable law. Except in emergencies, any regulations of the Secretary concerned relating to
 28 hunting and fishing pursuant to this section shall be put into effect only after consultation with
 the appropriate State fish and game department. Nothing in this Act shall modify or change any

1 provision of Federal law relating to migratory birds or to endangered or threatened species.
2 Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and
3 in the last sentence of this paragraph, no provision of this section or any other section of this Act
4 shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims
5 under that Act, including, but not limited to, rights of ingress and egress. In managing the
6 public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent
7 unnecessary or undue degradation of the lands.”

8 182. FLPMA Section 601(d) provides as follows: “The Secretary [of the Interior], in
9 accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-
10 range plan for the management, use, development, and protection of the public lands within the
11 California Desert Conservation Area. Such plan shall take into account the principles of
12 multiple use and sustained yield in providing for resource use and development, including, but
13 not limited to, maintenance of environmental quality, rights-of-way, and mineral development.
14 Such plan shall be completed and implementation there-of initiated on or before September 30,
15 1980.”

16 183. FLPMA Section 601(f) provides as follows: “Subject to valid existing rights,
17 nothing in this Act shall affect the applicability of the United States mining laws on the public
18 lands within the California Desert Conservation Area, except that all mining claims located on
19 public lands within the California Desert Conservation Area shall be subject to such reasonable
20 regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent
21 issued on any such mining claim shall recite this limitation and continue to be subject to such
22 regulations. Such regulations shall provide for such measures as may be reason-able to protect
23 the scenic, scientific, and environmental values of the public lands of the California Desert
24 Conservation Area against undue impairment, and to assure against pollution of the streams and
25 waters within the California Desert Conservation Area.”

26 184. Defendants have not complied with FLPMA as it relates to the Blythe Project
27 even though it is located on federal (public) land and is within the California Desert
28 Conservation Area and subject to the CDCA Plan.

185. Defendants' failure to comply with the CDCA Plan and take all action necessary to prevent unnecessary or undue degradation of the federal (public) land affected when they approved the Blythe Project was contrary to FLPMA and arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law as required by the APA.

186. Plaintiffs, their respective members, and other members of the public have been harmed as a result of Defendants' violations of FLPMA and the APA because they have been denied the benefits and protections provided by compliance with those laws. By way of example and without limitation, Plaintiff, its members, and the public will have to endure unnecessary or undue degradation of the federal (public) land affected by the Blythe Project and will lose the protections provided for this land by the CDCA Plan.

THIRTIETH CLAIM:
Violation of Native American Graves Protection & Repatriation Act--Blythe Project
(Against All Defendants except Lee, Trost, and Goodro)

187. Paragraphs 1 through 186 are fully incorporated into this paragraph.

188. Section 3(b) of the NAGPRA provides as follows: "Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary [of the Interior] in consultation with the review committee established under section [8] of this [Act], Native American groups, representatives of museums and the scientific community."

189. Section 3(c) of the NAGPRA provides as follows: "The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if--

"(1) such items are excavated or removed pursuant to a permit issued under section 470cc of Title 16 [of the U.S. Code] which shall be consistent with this [Act];

"(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

1 “(3) the ownership and right of control of the disposition of such items
2 shall be as provided in subsections (a) and (b) of this section; and

3 “(4) proof of consultation or consent under paragraph (2) is
4 shown.”

5 190. Defendants’ approval of the Blythe Project will result in the intentional
6 excavation, disposal, or other removal of Native American cultural items (including human
7 remains) known to be or strongly suspected of being on the site of the Project without
8 compliance with the conditions necessary for excavation, disposal, or other removal. By way
9 of example and not limitation, Defendants have not consulted with or obtained the consent of
10 the Indian tribe whose cultural remains or located on the site of the Project.

11 191. Defendants’ failure to consult with and obtain the consent of the appropriate
12 Indian tribe prior to excavating, disposing of, or otherwise removing Native American cultural
13 items (including human remains) known to be or strongly suspected of being on the site of the
14 Blythe Project was contrary to the NAGPRA and arbitrary, capricious, an abuse of discretion,
15 or otherwise not in accordance with law as required by the APA.

16 192. Plaintiffs, their respective members, and other members of the public have been
17 harmed as a result of Defendants’ violations of the NAGPRA and the APA because they have
18 been denied the benefits and protections provided by compliance with those laws. By way of
19 example and without limitation, Plaintiff, its members, and the public (including the appropriate
20 Indian tribe) will have to endure the excavation, disposal, or other removal of Native American
21 cultural items (including human remains) located on the site of the Blythe Project without the
22 necessary consultation and consent prior to Defendants’ approval of the Project.

23
24
25
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28

PRAYER FOR RELIEF

FOR ALL THESE REASONS, Plaintiffs respectfully pray for the following relief, conjunctively or disjunctively as the Court determines to be appropriate, against Defendants (and any and all other parties who may oppose Plaintiff in this proceeding):

A. On the First, Sixth, Eleventh, Sixteenth, Twenty-First, and Twenty-Sixth Claims:

1. For each of the Projects, a judgment or other final order determining or declaring that Defendants failed to comply fully with the NHPA and the APA as they relate to the Project (including all associated entitlements and leases) and that the Project's approval was illegal in at least one respect, rendering the approval null and void;

2. For each of the Projects, a judgment or other final order determining or declaring that Defendants must fully comply with the NHPA and the APA before final approval of the Project may be granted; and

3. For each of the Projects, injunctive relief prohibiting Defendants (and any and all persons acting at the request of, in concert with, for the benefit of, in privity with, or under one or more of them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until Defendants fully comply with all applicable provisions of the NHPA and the APA, as determined by the Court.

B. On the Second, Third, Seventh, Eighth, Twelfth, Thirteenth, Seventeenth, Eighteenth, Twenty-Second, Twenty-Third, Twenty-Seventh, and Twenty-Eighth Claims:

1. For each of the Projects, a judgment or other final order determining or declaring that Defendants failed to comply fully with NEPA and the APA as they relate to the Project (including all associated entitlements and leases) and that the Project's approval was illegal in at least one respect, rendering the approval null and void;

2. For each of the Projects, a judgment or other final order determining or declaring that Defendants must prepare an EIS for the Project fully in accordance with NEPA and the APA before final approval of the Project may be granted; and

3. For each of the Projects, injunctive relief prohibiting Defendants (and any and all persons acting at the request of, in concert with, for the benefit of, in privity with, or

1 under one or more of them) from taking any action on any aspect of, in furtherance of, or
2 otherwise based on the Project unless and until Defendants fully comply with all applicable
3 provisions of NEPA and the APA, as determined by the Court.

4 C. On the Fourth, Ninth, Fourteenth, Nineteenth, Twenty-Fourth, and Twenty-Ninth
5 Claims:

6 1. For each of the Projects, a judgment or other final order determining or
7 declaring that Defendants failed to comply fully with FLPMA and the APA as they relate to the
8 Project (including all associated entitlements and leases) and that the Project's approval was
9 illegal in at least one respect, rendering the approval null and void;

10 2. For each of the Projects, a judgment or other final order determining or
11 declaring that Defendants must fully comply with FLPMA and the APA before final approval
12 of the Project may be granted; and

13 3. For each of the Projects, injunctive relief prohibiting Defendants (and any
14 and all persons acting at the request of, in concert with, for the benefit of, in privity with, or
15 under one or more of them) from taking any action on any aspect of, in furtherance of, or
16 otherwise based on the Project unless and until Defendants fully comply with all applicable
17 provisions of FLPMA and the APA, as determined by the Court.

18 D. On the Fifth, Tenth, Fifteenth, Twentieth, Twenty-Fifth, and Thirtieth Claims:

19 1. For each of the Projects, a judgment or other final order determining or
20 declaring that Defendants failed to comply fully with the NAGPRA and the APA as they relate
21 to the Project (including all associated entitlements and leases) and that the Project's approval
22 was illegal in at least one respect, rendering the approval null and void;

23 2. For each of the Projects, a judgment or other final order determining or
24 declaring that Defendants must fully comply with the NAGPRA and the APA before final
25 approval of the Project may be granted; and

26 3. For each of the Projects, injunctive relief prohibiting Defendants (and any
27 and all persons acting at the request of, in concert with, for the benefit of, in privity with, or
28 under one or more of them) from taking any action on any aspect of, in furtherance of, or

1 otherwise based on the Project unless and until Defendants fully comply with all applicable
2 provisions of the NAGPRA and the APA, as determined by the Court.

3 E. All legal fees and other expenses incurred in connection with this proceeding,
4 including but not limited to reasonable attorney fees as authorized by law; and

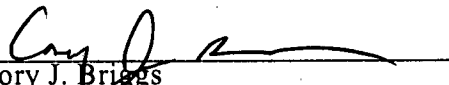
5 F. Any and all further relief that this Court may deem appropriate.

6 Date: December 27, 2010.

Respectfully submitted,

7 BRIGGS LAW CORPORATION

8
9 By:


Cory J. Briggs

10 Attorneys for Plaintiffs La Cuna de Aztlan Sacred
11 Sites Protection Circle Advisory Committee,
12 CALifornians for Renewable Energy, Alfredo Acosta
13 Figueroa, Phillip Smith, Patricia Figueroa, Ronald
14 Van Fleet, and Catherine Ohrin-Greipp

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS
RELIEF UNDER THE ADMINISTRATIVE PROCEDURES ACT, THE
NATIONAL HISTORIC PRESERVATION ACT, THE NATIONAL
ENVIRONMENTAL POLICY ACT, THE FEDERAL LAND POLICY AND
MANAGEMENT ACT, AND THE NATIVE AMERICAN GRAVES
PROTECTION AND REPATRIATION ACT**

Exhibit "A"



**Amendment No. 1 to Memorandum of Understanding
Between
United States Department of the Interior
Bureau of Land Management
and the
Southern Low Desert Resource Conservation and Development Council**

This Amendment No. 1 modifies the current Memorandum of Understanding (MOU) that was signed by the Bureau of Land Management (BLM) and the Southern Low Desert Resource Conservation and Development Council (Council) in July 2006 to include the La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee (LCASSPC) and the Blythe Area Chamber of Commerce and Tourist Information Center (Chamber) in the partnership for protection of cultural resources in the BLM Yuma Field Office planning area.

Section "II. Definitions" is amended as follows:

- A. BLM: The Bureau of Land Management's Yuma Field Office, which has management responsibility for the public land area covered under this MOU.
- B. Council: The Southern Low Desert Resource Conservation and Development Council (a 501(c)(3) non-profit / non-governmental conservation and community development organization).
- C. LCASSPC: La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee. A 501(c)(3) nonprofit organization that is comprised of 15 indigenous and culturally aware individuals who are dedicated to physically protecting the Blythe Giant Intaglios, other geoglyphs, and several hundred sacred sites that are located along the Colorado River from Needles, California, to Yuma, Arizona.
- D. Chamber: The Blythe Area Chamber of Commerce and Tourist Information Center. Provides information to visitors and the community about the Blythe Intaglios and other important cultural resources in the vicinity of Blythe, California.
- E. MOU signatories: Refers to all agencies and organizations that have a formalized partnership through the July 2006 MOU and associated amendments.

Section "III. Statement of MOU Purpose" is amended as follows:

This Memorandum of Understanding (MOU) will provide a means for the ~~BLM the Council~~ MOU signatories to work in partnership to enhance cultural resources protection, conservation, and interpretation efforts on BLM lands within the Yuma Field Office's jurisdiction and the Southern Low Desert RC&D area. The purpose of this MOU is to assist the BLM with its responsibilities under Section 110 of the National Historic Preservation Act of 1966, as amended.

The ~~BLM, and the Council~~ MOU signatories agree that all projects conducted under this MOU will be carried out by qualified specialists. Contractors hired for projects must meet

BLM standards. Projects that may be conducted under this MOU include but are not limited to cultural resources survey, archaeological site recordation, National Register of Historic Places nominations, ethnographic studies with interested Native American tribes, design and installation of site protection and interpretation measures, and the production of interpretive materials for the public. All projects will be coordinated with and approved by the BLM.

The BLM and the Council MOU signatories have a common objective of helping to bring about the conservation, development, and wise use of archaeological and historical resources in the southeastern California desert area. Therefore, ~~both the BLM and the Council~~ the MOU signatories deem this effort of mutual benefit to ~~both~~ all parties. We hereby agree as follows:

A. The Council agrees to:

1. Work cooperatively with BLM to coordinate and facilitate the development of plans for the conservation, protection, and interpretation of desert resources. Specifically, the Council agrees to diligently work towards the immediate and future protection of cultural resources, including the Blythe Intaglios, for the public good.
2. Assist with any environmental documents deemed necessary for the completion of joint projects within the mutual boundary of the Council and BLM.
3. Provide a public outreach program to encourage and promote active public participation in the protection of desert resources.
4. Assist in the solicitation of funds from outside organizations and agencies to complete agreed upon projects or work items within the mutual boundaries of the BLM and the Council.

B. LCASSPC agrees to:

1. Work cooperatively with BLM to coordinate and facilitate the development of plans for the conservation, protection, and interpretation of desert resources and sacred sites. Specifically LCASSPC agrees to diligently work toward the immediate and future protection of cultural resources, including the Blythe Intaglios, for the good of the future generations and the public good.
2. Assist with any environmental documents deemed necessary for the completion of joint projects.
3. Provide a public outreach program to encourage and promote active public participation in the protection of desert resources.
4. Assist in the solicitation of funds from outside organizations and agencies to complete agree upon projects or work items.

C. The Chamber agrees to:

1. Work cooperatively with BLM to coordinate and facilitate the development of plans for the conservation, protection, and interpretation of desert resources. Specifically, the Chamber agrees to diligently work toward the immediate and future protection of cultural resources, including the Blythe Intaglios, for the public good.
2. Provide a public outreach program to encourage and promote active public participation in the protection of desert resources.
3. Assist in the solicitation of funds from outside organizations and agencies to complete agreed upon projects or work items.

D. BLM agrees to:

1. Work cooperatively with the Council on projects of mutual benefit to BLM and the Council the MOU signatories.
2. Provide technical and planning assistance for projects of mutual benefit to the BLM and the Council MOU signatories.
3. Initiate any environmental assessment documents deemed necessary for the completion of any agreed upon joint projects within the mutual boundaries of the BLM and the Council.
4. Assist with the preparation of statements of work and hiring of contractors to complete the agreed upon projects.
5. Cooperate and assist (when appropriate) with seeking funds to complete agreed upon joint projects.

Section "IV. Terms of the MOU" is amended as follows:

A. The following individuals are designated as the liaison between the BLM and the Council MOU signatories.

1. Bureau of Land Management
Yuma Field Office
~~Rebecca Helek~~ James T. Shoaff, Field Manager
2555 E Gila Ridge Road
Yuma, AZ 85365
PH: (928) 317-3200
FX: 928-317-3250
2. Southern Low Desert Resource Conservation & Development Council
Thomas Burgin, President
53990 Enterprise Way, 6B .

Coachella, CA 92236
PH: 760-391-9002
FX: 760-391-9813

3. La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee

Alfredo A. Figueroa
Escuela de la Raza Unida
137 N. Broadway
Blythe, CA 92225
PH: (760) 922-6442
E-mail: lacunadeaztlan@aol.com

4. Blythe Area Chamber of Commerce and Tourist Information Center

Jim Shipley, COO
201 S Broadway
Blythe, CA 92225
PH: 760-922-8166
FX: 760-922-4010
E-mail: blythecoc@yahoo.com

B. Nothing herein is intended to conflict with existing BLM, Department of the Interior orders, or Council directives. If any terms or conditions of this MOU are inconsistent with existing BLM orders or Council directives, those portions of this MOU are invalid.

By signing below, the partners show their agreement to MOU Amendment No. 1 as described in this document.

Thomas Burgin, President of the Southern Low Desert Resource Conservation and Development Council.

Signed: Thomas Burgin Date MAR. 6, 2008

Alfredo Figueroa, La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee.

Signed: Alfredo Figueroa Date Feb. 15, 2008

Jim Shipley, Blythe Area Chamber of Commerce and Tourist Information Center.

Signed: Jim Shipley Date FEB 29, 2008

James T. Shoaff, Field Manager of the Bureau of Land Management Yuma Field Office.

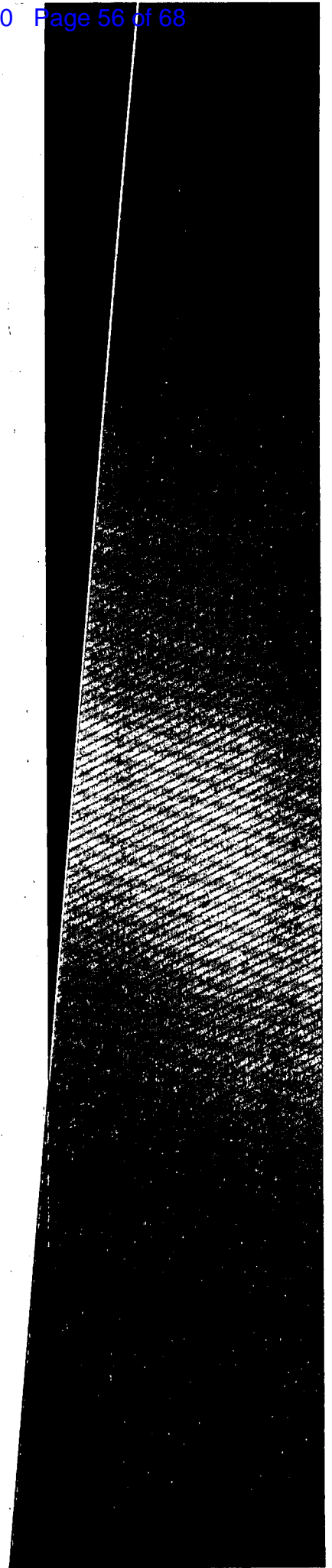
Signed: James T. Shoaff Date March 14, 2008

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS
RELIEF UNDER THE ADMINISTRATIVE PROCEDURES ACT, THE
NATIONAL HISTORIC PRESERVATION ACT, THE NATIONAL
ENVIRONMENTAL POLICY ACT, THE FEDERAL LAND POLICY AND
MANAGEMENT ACT, AND THE NATIVE AMERICAN GRAVES
PROTECTION AND REPATRIATION ACT**

Exhibit "B"

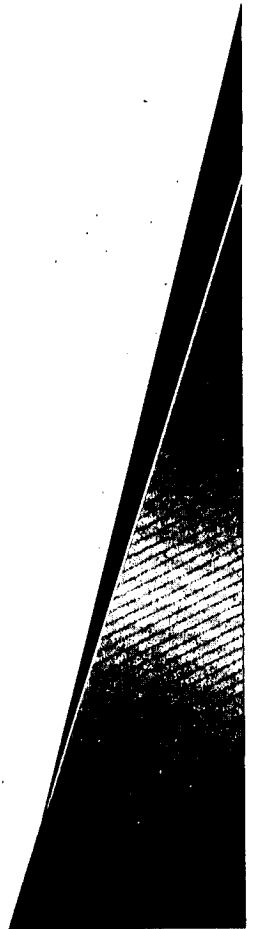
Amending Land Use Plans with Programmatic EISs

BLM 2009 National Land Use Planning Conference
“Keeping Pace with Change”



Session Overview

- Programmatic EISs and Tiering (S. Stewart)
- BLM Programmatic EISs (S. Stewart)
- Programmatic EISs Lessons Learned (K. Winthrop)
- Programmatic vs. Site-Specific EISs (I. Hlohowskyj)



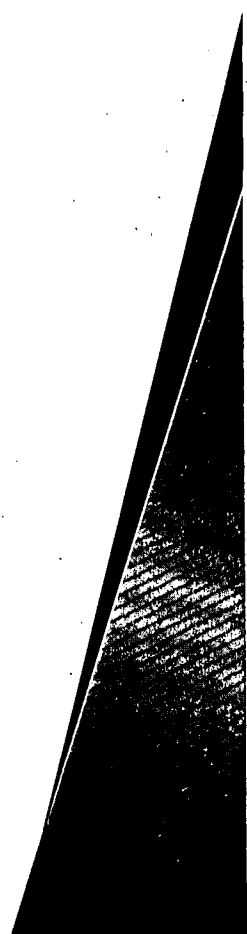
What is a Programmatic EIS (PEIS)?

- ▶ EIS – CEQ regulations do not define the term “Programmatic Analyses” separately.
- ▶ 40 CFR 1502.4(b) – EISs may be prepared for broad Federal actions such as the adoption of new agency programs or regulations.
- ▶ 40 CFR 1502.4(c) – When preparing statements on broad actions agencies may find it useful to evaluate proposals in one of the following ways:
 - Geographically, actions occurring in the same general location
 - Generically, actions that have relevant similarities
 - By stage of technological development



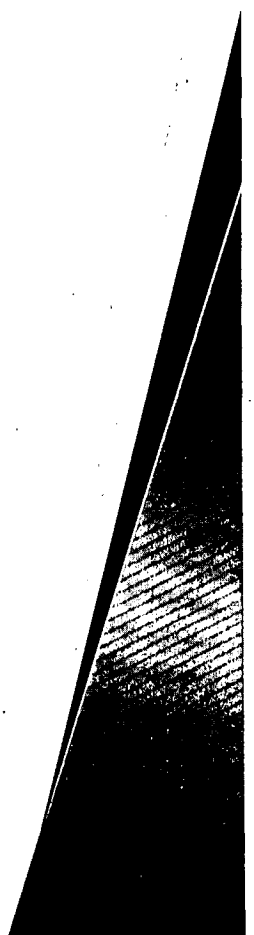
Types of Actions that PEISs Support

- ▶ Adopting Official Policy
 - National-level rulemaking
 - Adoption of agency-wide policy
- ▶ Adopting Formal Plan
 - Adoption of an agency plan for a group of related projects
- ▶ Adopting Agency Program
 - A new agency mission or initiative
 - Redesign of existing programs
- ▶ Approving Site-Wide or Area-Wide Actions
 - Similar actions in a region
 - Multiple actions that share a common geography or timing



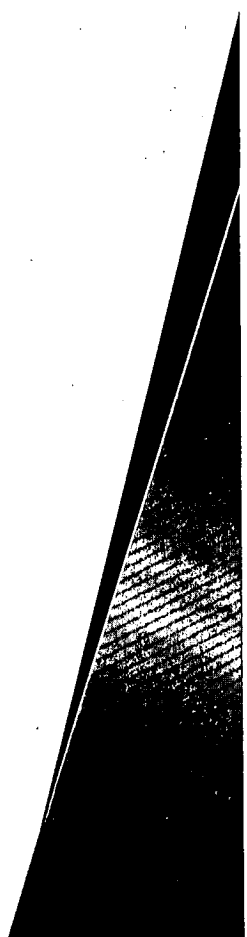
PEISs Generally...

- ▶ Used for broad geographic areas
- ▶ Assess impacts across a span of conditions (facilities, geographic regions or multi-project programs)
- ▶ Emphasize cumulative impacts
- ▶ Emphasize policy level alternatives
- ▶ Emphasize program level mitigation measures and BMPs
- ▶ Do not define facilities or specific sites
- ▶ Tend to be more generic and conceptual than project-specific EISs



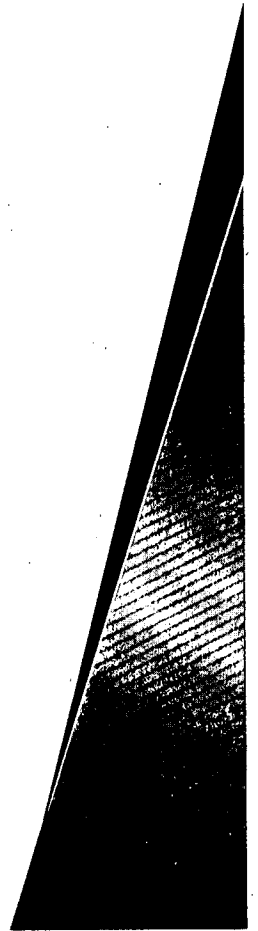
Tiering

- ▶ In cases where a broad policy, plan, program or project will later be translated into site-specific projects, subsequent analyses are referred to as “tiered” analyses.
- ▶ 40 CFR 1508.28 – “Tiering” refers to the coverage of general matters in a broader EIS with subsequent narrower EISs or EAs incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.



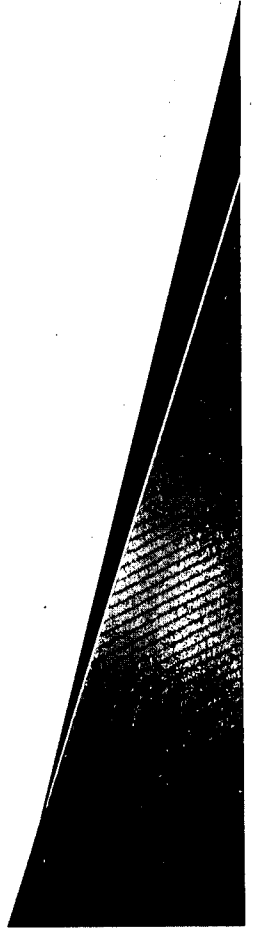
Benefits of PEISs and Tiering

- ▶ Focus on issues ripe for decision at each level of environmental review (40 CFR 1502.20)
- ▶ Opportunity to evaluate potential cumulative impacts of the reasonably foreseeable actions under a program (40 CFR 1502.4(c))
- ▶ Reduce paperwork (40 CFR 1500.4)
- ▶ Reduce delay (40 CFR 1500.5)
- ▶ Opportunity to prepare EA/FONSI for individual actions when there are no new significant impacts (NEPA Handbook 5.2.2)



PEIS Challenges

- ▶ Scope
- ▶ Content
- ▶ Specificity of Analysis
- ▶ Alternatives
- ▶ Addressing Deferred Issues
- ▶ Handling Proposals while Preparing a PEIS

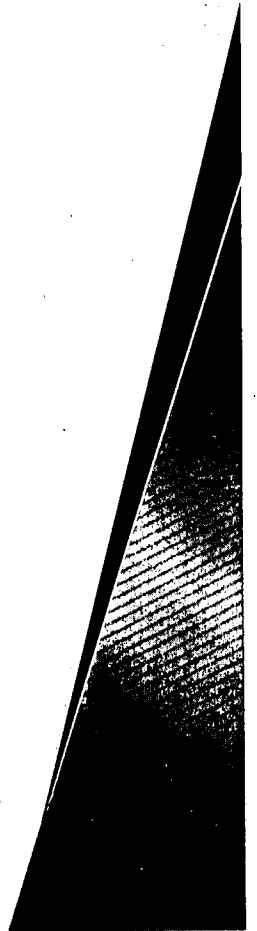


Examples of BLM PEISs

Name	Action	Agency	Status
Wind Energy AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY	Amend 52 land use plans to identify lands suitable for wind energy development ROW applications (no plans amended in AZ or CA).	BLM	ROD signed December, 2005
Oil Shale and Tar Sands CO, UT, WY	Amend 10 land use plans to allocate lands suitable for consideration of leasing proposals.	BLM	ROD signed November, 2008
Geothermal Leasing AK, AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY	Amend 114 land use plans to identify lands as open or closed to geothermal leasing and to adopt stipulations, BMPs and procedures for leasing.	BLM, FS	ROD signed December, 2008
West-Wide Energy Corridors AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY	Amend 130 land use plans to designate energy transport corridors on federal lands suitable for proposed pipeline and transmission line ROW applications.	BLM, FS, DOD, DOE, FWS, NPS	RODs signed January, 2009 (BLM, FS)
Solar Energy Development AZ, CA, CO, NM, NV, UT	Goal is to amend land use plans to identify lands suitable for solar energy development ROW applications.	BLM	Draft PEIS scheduled for Summer, 2009

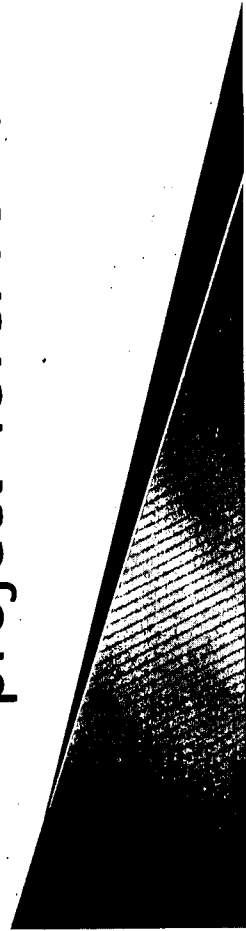
BLM PEIS Decisions

- ▶ Allocate lands as open or closed to leasing or right-of-way authorizations; designate energy transport corridors
- ▶ Develop a reasonably foreseeable development scenario
- ▶ Adopt stipulations, BMPs, mitigation measures and Interagency operating procedures applicable to future projects
- ▶ Adopt standard processes and procedures for leasing or right-of way authorizations
- ▶ Amend BLM land use plans to adopt all of the above



BLM PEIS Implementation

- ▶ PEIS's do not authorize any on-the-ground activities or waive environmental review for subsequent individual actions.
- ▶ All future development projects must be in conformance with the existing land use plan as amended.
 - Land use plan amendments via a PEIS adopt the resource allocations, reasonably foreseeable development scenario, stipulations, BMPs and procedures.
- ▶ Site-specific concerns and the development of additional mitigation measures will be addressed in project-level reviews tiered to the analysis in the PEIS.



JS 44 (Rev. 12/07)

ORIGINAL**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee et al.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Briggs Law Corporation, 99 East "C" Street, Suite 111, Upland, CA

DEFENDANTS

United States Department of the Interior

County of Residence of First Listed Defendant DISTRICT COURT
(IN U.S. PLAINTIFF CASES ONLY, CALIFORNIA)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10 CV 2664 WQH

yob DEPUTY
WVG**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
16 U.S.C. 470 et. seq.; 42 U.S.C. 4321 et. seq.; 43 U.S.C. 1701 et. seq.; 25 U.S.C. 3001 et. seq.Brief description of cause:
Declaratory, Injunctive and Mandamus Relief**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Larry A. BurnsDOCKET NUMBER 10cv2241-LAB (CAB)

DATE

12/27/2010

SIGNATURE OF ATTORNEY OF RECORD

Carly J. R.

FOR OFFICE USE ONLY

RECEIPT # 21574 AMOUNT \$ 350.00APPLYING IFP NS

JUDGE

MAG. JUDGE

12-27-10

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS021574
Cashier ID: nsiefken
Transaction Date: 12/27/2010
Payer Name: BRIGGS LAW CORP

CIVIL FILING FEE
For: LA CUNA DE AZTLAN V US DEPARTM
Case/Party: D-CAS-3-10-CV-002664-001
Amount: \$350.00

CHECK
Check/Money Order Num: 60414
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.